



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2005

Ms. Amy Ramsey
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2005-02154

Dear Ms. Ramsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 220086.

The City of Fort Worth (the "city") received a request for three categories of information regarding a named city police officer. You state that the majority of the requested information will be released to the requestor, with some information redacted pursuant to a previous determination issued by this office in Open Records Decision No. 670 (2001).¹ However, you claim that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential. The submitted information includes a W-4 form. Federal tax return information is confidential under section 6103(a) of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a). The term "return information" includes "the nature, source, or amount of income" of a taxpayer. *See* 26 U.S.C. § 6103(b)(2). Our office has specifically held that a governmental body must withhold a Form W-4 in its entirety. Open Records Decision No. 600 at 9 (1992). Therefore, the city must withhold the submitted W-4 form under

¹ *See* Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to chapter 552 of Government Code to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without necessity of requesting attorney general decision under section 552.117(a)(2)); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found that personal financial information not related to a financial transaction between an individual and a governmental body is generally protected by common law privacy. See Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common law privacy). We note that a portion of the remaining submitted information is protected from disclosure by the common law right to privacy. Accordingly, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common law privacy.

You next claim that section 552.117 of the Government Code is applicable to some of the submitted information. Section 552.117(a)(2) excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175.² See Gov't Code § 552.117(a)(2). Accordingly, we conclude that the city must withhold the information that we have marked concerning the peace officer who is the subject of this request pursuant to section 552.117(a)(2). We are uncertain whether other portions of the submitted information that you have highlighted under section 552.117 pertain to an individual who is a licensed peace officer. If this particular information does pertain to a licensed peace officer, then the city must also withhold this information pursuant to section 552.117(a)(2) of the Government Code.

Nevertheless, if that particular information does not pertain to a licensed peace officer, then the information may still be excepted from disclosure pursuant to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this

² Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. See Crim. Proc. Code art. 2.12.

information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(a)(1) if the employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that to the extent that the individual with whom this particular marked information is associated is an employee who elected confidentiality for this information prior to the date that the city received this request, the city must withhold that information pursuant to section 552.117(a)(1) of the Government Code.

In summary, the W-4 form must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. The city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common law privacy. The city must withhold the information that we have marked concerning the peace officer who is the subject of this request pursuant to section 552.117(a)(2) of the Government Code. The city must also withhold the additional information that we have marked under section 552.117, if the information pertains to a licensed peace officer. Nevertheless, if that particular information does not pertain to a licensed peace officer, then the information may still be excepted from disclosure if section 552.117(a)(1) of the Government Code is applicable. If not, this and the remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body

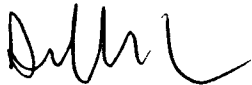
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 220086

Enc. Submitted documents

c: Mr. Joshua Kowert
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(w/o enclosures)